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1944

File No. P.S.C. II/44

Legal Department

B BRANCH

Subject:— Notifications under the Bombay Sind Public Service Commission (Conditions of Service) Regulations

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Gen. 104 a.

268-B

Office of the R.L.A.

Regulations 16 to 19 of the Bombay and Sind Public Service Commission (Conditions of Service) Regulations are the relevant provisions for deciding whether it is legally necessary first to retire K.B. Warden on 19th June 1945, the date of his superannuation, and then to re-employ him as Secretary P.SC., or whether it is legally feasible to adopt the course suggested by C.S. namely "as long as K.B. Warden remains on the list of G.D. as a member of the Secretariat establishment, that is, till he reaches the age of 55 years, he should be shown as Secretary, P.SC. on deputation and as soon as his 55th birthday is passed he ceases to be on deputation and remains what he is now Secretary, P.S.C. on an incremental scale operative over a period of five years in all, the pension which would be due to K.B. Warden being withheld until he completes his tenure of five years as Secretary P.S.C.". Regulation 17 specifically fixes the tenure of five years for the Secretary, P.SC. appointed under Regulation 16. Then Regulation 19 makes the ~~MAKES~~ makes the B.C.S. Rules applicable in respect of all other matters. It is thus clear that if any rule (such as rule 161) of the B.C.S. Rules proves repugnant to the operation of Regulation 17, the Regulation must prevail and the rule ~~xxxxxx~~ is to that extent abrogated. It is therefore not legally feasible in the normal course to retire K.B. Warden who is appointed Secretary, P.S.C. from 11-2-~~44~~ before the expiry of his five year tenure on 11-2-1949. Moreover, to regard K.B. Warden as retiring on 19-6-45 and as reappointed from that date would result in giving him a fresh five year tenure on re-appointment upto 19-6-1950 which is obviously not intended. The course Suggested by C.S. is legally appropriate.

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P.T.O.

Id/- P.N.M.
20/3/1944.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 2121, dated the 20th March 1944.

EVI. 6/7.